

Sponsored by: Lindsey  
Introduction Date: 5/16/2016  
Public Hearing Dates: 5/16/2016  
5/24/2016  
6/14/2016  
Enactment date: 6/14/2016

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2016-06**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA REPEALING CHAPTER 102, ARTICLE 23 OF THE CITY CODE OF ORDINANCES; PROVIDING FOR THE ADOPTION OF A NEW ARTICLE 23, ENTITLED “VERIFICATION OF BUILDING RIGHTS,” TO INCLUDE NEW REQUIREMENTS FOR DOCUMENTATION OF BUILDING RIGHTS, PROVISIONS FOR INTENT, APPLICATIONS AND VERIFICATION PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES FOUND TO BE IN CONFLICT, AND PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, provides for comprehensive plan implementation through the enactment of certain ordinances; and

**WHEREAS**, the City of Marathon is located within an Area of Critical State Concern (ACSC), pursuant to Sections 380.05 and 380.0552, Florida Statutes, hereinafter referred to the “Keys ACSCs”; and

**WHEREAS**, Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, Florida Statutes, which have been approved by the State, as required by law, and;

**WHEREAS**, Chapter 166, *Florida Statutes*, grants the City of Marathon (the “City”) broad municipal home rule powers to provide for the health, safety and welfare of its residents, business owners and visitors by enacting business regulations for the protection of the public; and

**WHEREAS**, the City of Marathon currently is engaged in a grant agreement with the Florida Department of Economic Opportunity which requires that the City submit to DEO revised Land Development Regulations (LDRs) that address local government requirements for subdivision of land and the approval process;

**WHEREAS**, said revisions must also provide a section that addresses the recognition of lawfully established units and a staff check list consistent with the City of Marathon Comprehensive Plan and the Principles for Guiding Development to include:

1. Property cards, aerials, photographs, permits, letters, telephone directories, public facility/utility documents, affidavits, rental, occupancy, or lease records;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:**

~~Strikethrough~~ = deletion      **bold underline** = addition

**SECTION 1.** The above recitals are true, correct, and incorporated herein by this reference.

**SECTION 2.** Chapter 102 Article 23, - "Verification of Building Rights," of the City of Marathon Code of Ordinances is hereby repealed. As provided below, a new Ordinance shall be inserted entitled, "Verification of Building Rights" to read as follows:

**ARTICLE 23. - VERIFICATION OF BUILDING RIGHTS**

Section 102.142. - Purpose and Intent.

The purpose and intent of this article is to provide a method by which an applicant may verify and document the existing number of dwelling units or commercial floor area associated with a property.

Section 102.143. - Application.

The owner of a parcel may apply to the City for verification and documentation of building rights for residential dwelling units or commercial floor area. The application will provide, at a minimum, the following documentation, to support the existence of each right:

- A. Proof of ownership of the property;
- B. Documentation of a permit or other local government action from the City or Monroe County;
- C. Proof the structure exists or existed in 1996 on aerials, surveys and ~~property appraiser~~ government records;
- D. Proof the structure could have been permitted under the applicable zoning district regulations in effect at the time the structure was constructed;
- E. For transient units, a Florida Department of Business and Professional Regulation (DBPR) license number and Monroe County Occupational License;
- F. ~~Documentation of utility bills that demonstrates the use and occupancy of the structure for six (6) months or more;~~
- G. ~~Rental, occupancy, or lease agreements; or~~

- HF. Other similar documentation as approved by the Director in order to verify each building right.

The owner of a property can provide the following documentation to the City to help substantiate the above documentation. However the following documentation cannot be the basis for the determination.

- A. Any documentation used for ad valorem tax purposes of all property within the City. This may include but is not limited to the following:  
a. Property Record Card from the Monroe County Property Appraiser  
b. Equivalency Dwelling Units (EDU) charges assessed by the City Utilities Department
- B. Documentation of utility bills that demonstrates the use and occupancy of the structure for six (6) months or more;
- C. Rental, occupancy, or lease agreements

Section 102.144. - Verification and Documentation Process.

- A. The City will review the application and pertinent material in order to verify the amount of dwelling units or commercial floor area associated with the site. The City may, at its discretion, obtain access to the site to ground truth the information provided and resolve any discrepancies. Upon determination of the building right(s), a unique identifier number shall be assigned to the site for tracking and monitoring and the City shall issue the owner a "Determination of Building Right" stating the type and amount of approved building rights available.
- B. The issuance of "Determination of Building Right" by the City may be recorded in the chain of title as an inchoate right upon the site. The right to use a recognized building right shall exist in perpetuity; however this right is extinguished upon transfer to a receiver site.
- C. No application for determination of building right shall be accepted if the sender site has any open permits or active code violations.

**SECTION 3.** All other existing provisions of Appendix A, "Land Development Regulations," Chapter 102, of the Code of Ordinance of the City of Marathon, Florida shall be renumbered accordingly.

**SECTION 4.** The Provisions of the Code of Ordinances, City of Marathon, Florida and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 5.** The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**SECTION 6.** It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**SECTION 7.** The provisions of this Ordinance constitute a "land development regulation" as state law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Economic Opportunity for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**SECTION 8.** This Ordinance shall be effective immediately upon approval by the State Department of Economic Opportunity pursuant to Chapter 380, Florida Statutes.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14<sup>th</sup> DAY OF JUNE, 2016.**

**THE CITY OF MARATHON, FLORIDA**



**Mark Senmartin, Mayor**

AYES: Bartus, Coldiron, Kelly, Zieg, Senmartin  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**



Diane Clavier, City Clerk  
(City Seal)

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**



City Attorney, David Migut

**STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION  
ADOPTED BY CITY OF MARATHON  
ORDINANCE NO. 2016-06

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**FINAL ORDER  
REJECTING CITY OF MARATHON ORDINANCE NO. 2016-06**

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to sections 380.05(6) and 380.0552(9), Florida Statutes, rejecting land development regulations adopted by the City of Marathon, Florida, Ordinance No. 2016-06 (the “Ordinance”).

**FINDINGS OF FACT**

1. The Florida Keys Area is designated by section 380.0552, Florida Statutes, as an area of critical state concern. The City of Marathon is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the City of Marathon on June 14, 2016, and rendered to the Department on December 28, 2016.
3. The Ordinance amends the City of Marathon Code of Ordinances, Appendix A (Land Development Regulations) Chapter 102, Article 23 by prohibiting the City to consider utility bills or rental agreements as the sole basis for determining the existence of building rights.

**CONCLUSIONS OF LAW**

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. Sections 380.05(6), and 380.0552(9), Florida Statutes.

5. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. Section 380.031(8), Florida Statutes. The regulations adopted by the Ordinance are land development regulations.

6. The Ordinance is inconsistent with the City of Marathon Comprehensive Plan Policy 1-3.4.3 because the Policy permits the City to consider utility bills and rental agreements as a basis for determining building rights. *See* section 163.3177(1), Florida Statutes.

7. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. Sections 380.05(6) and 380.0552(9), Florida Statutes. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in section 380.0552(7), Florida Statutes.

8. The Ordinance is inconsistent with section 380.0552(7)(a), Florida Statutes, because it fails to “[strengthen] local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.”

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2016-06 is inconsistent with the City of Marathon Comprehensive Plan and the Principles for Guiding Development for the Florida Keys Area of Critical State Concern and is hereby REJECTED.

This Order becomes effective 21 days after publication in the Florida Administrative Register unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.



*Julie Demp*

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Taylor Teepell, Director  
Division of Community Development  
Department of Economic Opportunity

**NOTICE OF ADMINISTRATIVE RIGHTS**

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES.

FOR THE REQUIRED CONTENTS OF A PETITION CHALLENGING AGENCY ACTION, REFER TO RULES 28-106.104(2), 28-106.201(2), AND 28-106.301, FLORIDA ADMINISTRATIVE CODE.

DEPENDING ON WHETHER OR NOT MATERIAL FACTS ARE DISPUTED IN THE PETITION, A HEARING WILL BE CONDUCTED PURSUANT TO EITHER SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, OR SECTIONS 120.569 AND 120.57(2), FLORIDA STATUTES. MEDIATION IS NOT AVAILABLE.

ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:


AGENCY CLERK  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
OFFICE OF THE GENERAL COUNSEL  
107 EAST MADISON ST., MSC 110  
TALLAHASSEE, FLORIDA 32399-4128  
FAX 850-921-3230

YOU WAIVE THE RIGHT TO ANY ADMINISTRATIVE PROCEEDING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER.



**CERTIFICATE OF FILING AND SERVICE**

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicated this 27<sup>th</sup> day of February, 2017.

  
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Agency Clerk  
Department of Economic Opportunity  
107 East Madison Street, MSC 110  
Tallahassee, FL 32399-4128

**By Certified U.S. Mail:**

The Honorable Dr. Dan Zieg, Mayor  
City of Marathon, City Council  
9805 Overseas Highway  
Marathon, FL 33050

Diane Clavier, Clerk  
City of Marathon  
9805 Overseas Highway  
Marathon, FL 33050

George Garrett, Director  
City of Marathon, Planning Department  
9805 Overseas Highway  
Marathon, FL 33050